



SUPREME COURT ON CASTE CONVERSION AND RESERVATION

THE SUPREME Court has done it again! The quagmire of judicial reasoning one witnessed in *Shoba Hymavathi Devi v. Setti Gangadhara Swamy and Others*¹ is revisited in the latest decision in *Meera Kanwaria v. Sunita & Ors.*² The Supreme Court has never been comfortable in providing the terra-firma of its jurisprudence on caste conversion by marriage. In *Meera Kanwaria*, Sunita got a false certificate declaring that she was the daughter of a person belonging to scheduled caste - the father of her brother-in-law's wife. She stood for election from a constituency in Municipal Corporation of Delhi reserved for scheduled castes. She in fact belongs to *Rajput* community, a higher caste. The appellant, belonging to the scheduled caste was the opposing candidate. She lost the election to Sunita. She, therefore, questioned her election on the ground that Sunita was not a member of scheduled caste. In fact, on inquiry, the sub divisional magistrate cancelled the certificate and a criminal case was registered against her under sections 406, 420, 469 and 471 IPC. That case is still pending.

The district judge who heard the election petition found that the certificate was fake and in the light of Supreme Court decisions annulled the election. On appeal the Delhi High Court distinguished the Supreme Court cases on the points and declared Sunita's election valid. The high court in its judgment noticed several decisions of the Supreme Court and opined that since Sunita was accepted by her husband's family and *baradari* the judgment of the district judge was unsustainable. The high court distinguished *Valsamma Paul v. Cochin University*³ on the premise that 'principle of reservation contained in Articles 15(4) and 16(4) of the Constitution of India would be different in a case wherein individual claims entitlement to other benefits that may be due to a person belonging to Scheduled Caste'. The high court also found that the district judge's conclusion that she was not accepted by the community of her husband was wrong. The cancellation of caste certificate was held irrelevant.

On appeal the Supreme Court reiterated its position but the court's reasoning and findings do not signify firm views. The court falls upon the district judge's decision who relied on two things: a) a circular of

1. (2005) 2 SCC 244.
2. 2005 (10) SCALE 39.
3. AIR 1996 SC 1011.



the govt. to the effect that no person who is not a scheduled caste by birth shall be deemed to be a member of scheduled caste or merely because he married a person belonging to scheduled caste; (b) the respondent was not accepted by the community as such though the elders of her husband's family approved her marriage. The Supreme Court then relied on its decisions to identify its guiding principles. The court located the fundamental principle evolved in *Punit Rai v. Dinesh Chaudhary*⁴ which runs as follows:

Determination of caste of a person is governed by the customary laws. A person under the customary Hindu law would be inheriting his caste from his father. In this case, it is not denied or disputed that the respondent's father belonged to a "Kurmi" caste. He was, therefore, not a member of the Scheduled Caste. The caste of the father, therefore, will be the determinative factor in absence of any law.

Then the court comes down to another aspect of the general principle referring to the reasoning in *N.E.Horo*,⁵ which runs thus:

Even if a female is not a member of tribe by virtue of birth she having been married to a tribal after due observance of all formalities and after obtaining the approval of the elders of the tribe would belong to the tribal community to which her husband belongs on the analogy of the wife taking the husband's domicile.

Then citing *Valsamma Paul* the court says that a candidate who had the advantageous start in life being born in forward caste and had march of advantageous life but is transplanted in backward caste by adoption or marriage or conversion does not become eligible for reservation.

To recapitulate, the court thus found that a person can become a member of scheduled caste by birth, if his father belongs to that caste or by marriage if he marries according to the custom of the scheduled caste and he has been accepted by the community. But such a person cannot have the benefit of reservation. If this is so, the court should have stopped here.

But it proceeds:⁶

Unless it is established as of fact that she had been accepted as a member of SC by the community as contra-distinguished from acceptance of her marriage by her husband's family, in our opinion, she cannot claim the benefit of reservation.

4. (2003) 8 SCC 204.

5. *N.E. Horo v. Jahan Ara*, AIR 1972 SC 1840.

6. *Lillykutty v. Scrutiny Committee*, JTA 2005 (12) SC 569.



It is on this basis that the Supreme Court disapproved the Delhi High Court's decision. The court draws strength from its own reasoning in *Sobha Hymayathi Devi* thus:

As discussed by the High Court based on the evidence in the case the indication available was that the appellant hardly resided in Bhimavaram village to which her maternal grandfather belonged and there was no occasion for that community to treat her as a member of that community. There is also nothing to show that the appellant followed the way of life of that community.

Again, one finds that the court gives a lot of emphasis on acceptance of the community for it observes in the decision under comment thus:

The High Court may or may not be right in holding that no special ceremony was required for conversion from upper caste to Jatav, but the finding of fact arrived at by the learned District Judge that her marriage had taken place as per Vedic Hindu Rites and her marriage had been accepted by her Biradari meaning thereby elders of her husband's family only cannot be held to be the same as that she had been accepted by the community of her husband.

This is the reasoning which one finds absolutely uncomfortable. Does it mean that if she is accepted by the community she would be treated as a member of the husband's caste? If so, what is the relevance of observations in *Valsamma Paul*, which runs as follows?:⁷

A candidate who had the advantageous start in life being born in forward caste and had march of advantageous life but is transplanted in backward caste by adoption or marriage or conversion, does not become eligible to the benefit of reservation either under Article 15(4) or 16(4), as the case may be. Acquisition of the status of Scheduled Caste etc. by voluntary mobility into these categories would play fraud on the Constitution, and would frustrate the benign constitutional policy under Articles 15(4) and 16(4) of the Constitution.

So it is not the acceptance by the community which is determinative of the entitlement for benefits of reservation. If it was so, in *Valsamma*, a Syrian Catholic who came to be accepted by the Latin Catholic church ought to have been given the benefits. Acceptance by the church is the insignia of acceptance of the community so far as Christians are concerned.

7. *Supra* note 3.



The *ratio* of these decisions at least after *Shobha Hymavati Devi* should be the following:

Person belonging to an upper caste cannot have the benefit of reservation available to scheduled caste and scheduled tribes by marrying somebody belonging to these castes and tribes. All other qualifications such as following of customs, acceptance by the community, advantageous starting of life by the upper caste spouse etc. are unnecessarily added and discussed causing confusion and conflicts of opinions even in High Courts as has happened in this case.

Though the court's reasoning is open to question in the light of the avowed aim of establishing a casteless society, it may be pointed out that the Supreme Court should be more explicit in expressing its opinions on questions so vital for the sustenance of our democracy and rule of law. It would add clarity if instead of extracting statements frequently from earlier decisions, the court's propositions are spelt out clearly and unwarranted qualifications and conditions are avoided.

*K. N. Chandrasekharan Pillai**

* Director, Indian Law Institute, New Delhi.